

Department of Veterans Affairs

§ 3.270

property as limited by community property laws; life expectancy; number of dependents who meet the requirements of § 3.250(b)(2); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.262(1) for the claimant and his or her dependents.

(e) *Agent Orange settlement payments.* There shall be excluded from the corpus of estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989)

(Authority: Pub. L. 101-201, 103 Stat. 1795)

(f) *Restitution to individuals of Japanese ancestry.* Effective August 10, 1988, for the purposes of section 306 pension and parents' death compensation, there shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.

(Authority: Sec. 105, Pub. L. 100-383; 102 Stat. 905; Sec. 6, Pub. L. 102-371; 106 Stat. 1167, 1168)

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea.

(Authority: 38 U.S.C. 1833(c))

(h) *Victims of Crime Act.* There shall be excluded from the corpus of estate or net worth of a claimant any amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded pro-

grams is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

(i) *Medicare Prescription Drug Discount Card and Transitional Assistance Program.* There shall be excluded from the corpus of estate or net worth of a claimant payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card.

(Authority: 42 U.S.C. 1395w-141(g)(6))

CROSS REFERENCES: Reductions and discontinuances; dependency. See § 3.500(h). Material change in income, net worth or change in status. See § 3.660. Income and net worth questionnaires. See § 3.661.

[28 FR 33, Jan. 1, 1963, as amended at 39 FR 28527, Aug. 8, 1974; 44 FR 45936, Aug. 6, 1979; 57 FR 59299, Dec. 15, 1992; 58 FR 33767, June 21, 1993; 62 FR 51279, Sept. 30, 1997; 67 FR 49587, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005; 76 FR 4248, Jan. 25, 2011]

§ 3.270 Applicability of various dependency, income and estate regulations.

(a) *Sections 3.250 to 3.270.* These sections are applicable to dependency, income and estate determinations needed to determine entitlement or continued entitlement for the following programs:

- (1) Parents' death compensation.
- (2) Old-law pension.
- (3) Section 306 pension.
- (4) Parents' dependency and indemnity compensation.

NOTE: Citations to title 38 U.S.C. in §§ 3.250 to 3.270 referring to section 306 or old-law pension generally refer to provisions of law in effect on December 31, 1978.

(b) *Sections 3.271 to 3.300.* These sections apply to income and estate determinations of entitlement to the improved disability and death pension program which became effective January 1, 1979.

[44 FR 45936, Aug. 6, 1979]

§ 3.271

38 CFR Ch. I (7-1-12 Edition)

REGULATIONS APPLICABLE TO THE IMPROVED PENSION PROGRAM WHICH BECAME EFFECTIVE JANUARY 1, 1979

SOURCE: 44 FR 45936, Aug. 6, 1979, unless otherwise noted.

§ 3.271 Computation of income.

(a) *General.* Payments of any kind from any source shall be counted as income during the 12-month annualization period in which received unless specifically excluded under § 3.272.

(Authority: 38 U.S.C. 501)

(1) *Recurring income.* Recurring income means income which is received or anticipated in equal amounts and at regular intervals (e.g., weekly, monthly, quarterly, etc.), and which will continue throughout an entire 12-month annualization period. The amount of recurring income for pension purposes will be the amount received or anticipated during a 12-month annualization period. Recurring income which terminates prior to being counted for at least one full 12-month annualization period will be treated as nonrecurring income for computation purposes.

(2) *Irregular income.* Irregular income means income which is received or anticipated during a 12-month annualization period, but which is received in unequal amounts or at irregular intervals. The amount of irregular income for pension purposes will be the amount received or anticipated during a 12-month annualization period following initial receipt of such income.

(3) *Nonrecurring income.* Nonrecurring income means income received or anticipated on a one-time basis during a 12-month annualization period (e.g., an inheritance). Pension computations of income will include nonrecurring income for a full 12-month annualization period following receipt of the income.

(b) *Salary.* Salary means the gross amount of a person's earnings or wages before any deductions are made for such things as taxes, insurance, retirement plans, social security, etc.

(c) *Business, farm or professional income.* (1) This includes gross income from a business, farm or profession as reduced by the necessary operating expenses such as cost of goods sold, or ex-

penditures for rent, taxes, and upkeep, or costs of repairs or replacements. The value of an increase in stock inventory of a business is not considered income.

(2) Depreciation is not a deductible expense.

(3) A loss sustained in operating a business, profession, farm, or from investments, may not be deducted from income derived from any other source.

(d) *Income from property.* Income from real or personal property is countable as income of the property's owner. The terms of a recorded deed or other evidence of title shall constitute evidence of ownership. This includes property acquired through purchase, gift, devise, or descent. If property is owned jointly, income of the various owners shall be determined in proportion to shares of ownership of the property. The owner's shares of income held in partnership shall be determined on the basis of the facts found.

(e) *Installments.* Income shall be determined by the total amount received or anticipated during a 12-month annualization period.

(Authority: 38 U.S.C. 501)

(f) *Deferred determinations.* (1) When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the 12-month annualization period, when total income received during that period will be determined and adjustments in pension payable made accordingly.

(Authority: 38 U.S.C. 501)

(2) When a claimed dependent is shown to have income which exceeds the additional amount of benefits payable based on the claimed dependency, but evidence requirements of § 3.204, § 3.205, § 3.209, or § 3.210 have not been met, the maximum annual rate of improved pension shall be determined without consideration of the claimed dependency. This amount shall be reduced by an amount which includes the income of the unestablished dependent. Adjustments in computation of the maximum annual rate of improved pension shall occur following receipt of